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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,353	12/18/2001	Victor I. Deonarine	ITW7510.008	3939
33647 7590 05/10/2007 ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (ITW) 136 S WISCONSIN ST PORT WASHINGTON, WI 53074			EXAMINER JAGAN, MIRELLYS	
			ART UNIT 2859	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/683,353

Applicant(s)

DEONARINE, VICTOR I.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-20 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-15 is/are allowed.
- 6) ☒ Claim(s) 16-20, 25, 26 and 29 is/are rejected.
- 7) ☒ Claim(s) 27 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 16, 18-20, 25, 26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by the publication titled "OMEGAMARKER[®] Temperature Test Kit" by OMEGA[®].

Referring to claims 16 and 18-20, OMEGA[®] discloses an apparatus comprising:

first means comprising a first stick for indicating a first temperature;

second means comprising a second stick for indicating a second temperature; and

means for retaining the first means to the second means in a side-by-side relationship to form an assembly capable of indicating at least two temperatures;

wherein the means for retaining the first means to the second means is configured to fixedly connect the first and second means to form a one-piece dual temperature indicator stick apparatus (the case, the first, and the second means form a one-piece apparatus when connected together); the means for retaining comprises a pair of tubular members (the housings in which each of the sticks are located) secured together by a connector (the case) that includes a longitudinal member (e.g., one side of the casing) having curved ends (the sections that snap-fit

Art Unit: 2859

the housings to the case) integrally molded to each of the tubular members (i.e., shaped so as to snap-fit the housings, as defined by applicant on page 9, paragraph 23, of the specification).

Referring to claims 25, 26, and 29, OMEGA® discloses an assembly comprising:

a first housing positioned along a first axis and configured to hold a compound that melts at a first temperature;

a second housing positioned along a second axis and configured to hold a second compound that melts at a second temperature; and

a one-piece connector physically connecting the first and second housings along different axes;

wherein the connector is configured to prevent rotation of the housings (snap-fits the housings to the connector, thereby preventing rotation of the housings); the connector comprises a longitudinal member having curved ends configured to secure the first and second housings (the sections that snap-fit the housings to the case); and the connector slidably secures the housings side-by-side (snap-fits the housings to the connector, which allows sliding movement of the housings).

3. Claims 16, 19, 20, 25, 26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,022,159 to Kossnar et al [hereinafter Kossnar].

Referring to claims 16, 19, and 20, Kossnar discloses an assembly comprising:

first means for indicating a first temperature;

second means for indicating a second temperature; and

Art Unit: 2859

means for retaining the first means to the second means in a side-by-side relationship to form an assembly capable of indicating at least two temperatures;

wherein the means for retaining the first means to the second means is configured to fixedly connect the first and second means to form a one-piece apparatus (the means for retaining, the first means, and the second means form a one-piece apparatus when connected together); the means for retaining comprises a pair of tubular members secured together by a connector that includes a longitudinal member (54) having curved ends integrally molded to each of the tubular members.

Referring to claims 25, 26, and 29, Kossnar discloses an assembly comprising:

a first housing (32a) positioned along a first axis and configured to hold a compound that melts at a first temperature;

a second housing (32b) positioned along a second axis and configured to hold a second compound that melts at a second temperature; and

a one-piece connector (10) physically connecting the first and second housings along different axes;

wherein the connector is configured to prevent rotation of the housings; the connector comprises a longitudinal member having curved ends, the curved ends configured to secure the first and second housings to the connector; and the connector slidably secures the first and second indicator stick housings in a side-by-side relationship (see column 4, lines 35-37).

Furthermore, referring to claim 25, the term “configured to” is not considered to be a positive structural limitation since it only requires the ability to so perform, i.e., the housings of

Art Unit: 2859

Kossnar et al are "configured to" hold a compound that melts at a given temperature since such a compound can be held by the housings, if so desired.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over OMEGA[®] in view of U.S. Patent 1,603,713 to Peterson.

OMEGA[®] discloses an apparatus comprising all of the limitations of claim 17, as stated above with respect to claims 16 and 18-20, except for the apparatus having means for controlling the movement of the first and second means for indicating temperature.

Peterson discloses a device for holding a crayon. Peterson teaches a mechanism for controlling the movement of a crayon within a holder. The mechanism comprises a collet (5) having threads for screwing onto the end of the holder, and a plurality of resistance mechanisms formed in the holder (arms) that are pressed together against the crayon by the collet to engage the crayon (which will limit rotational movement). Peterson teaches that it is useful to provide such a mechanism since it allows a user to control the movement of the sticks, i.e., allows a user to extend or retract the crayon a desired distance from or into the holder, in order to store or protect the crayon.

Art Unit: 2859

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus disclosed by OMEGA[®] by adding a mechanism for controlling the movement, as taught by Peterson, of the first and second means for indicating temperature from a corresponding part of the retaining means in order to allow a user to extend or retract the means for indicating temperature a desired distance from or into the retaining means when marking a surface with the means for indicating temperature.

Allowable Subject Matter

6. Claims 2-15 are allowed.
7. Claims 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if claim 27 is rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter:
The prior art of record does not disclose or suggest the following in combination with the remaining limitations of the claims:
A dual temperature indicator stick assembly comprising a pair of collets, wherein each of the pair of collets is configured to engage separate indicator sticks upon rotation about one of the first and second axis (see claim 2).

Art Unit: 2859

A dual temperature indicator stick holder comprising a pair of advancement mechanisms, wherein each of the pair of advancement mechanisms engages a respective indicator stick upon rotation of a respective advancement mechanism (see claim 10).

A dual temperature indicator stick assembly wherein the curved ends have hooks configured to engage the first and second housings (see claim 27).

Response to Arguments

9. Applicant's arguments with respect to claim 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 12PM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJ
May 8, 2007


Diego Gutierrez
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